



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Techniarts Engineering

File: B-234434

Date: June 7, 1989

DIGEST

Contracting agency failed to conduct meaningful discussions with offeror under negotiated procurement for a video teleconferencing system where negotiation letter raised only general matters such as equipment/display bays or controller "not adequately addressed" and did not point out specific deficiencies for which evaluators later rejected proposal.

DECISION

Techniarts Engineering protests the award of a fixed-price contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. N00123-88-R-0040, issued by the Navy for video teleconferencing systems (VTS).^{1/} The protester alleges that the agency did not conduct meaningful discussions.

We sustain the protest.

The solicitation provided that technical proposals would be evaluated on an acceptable/unacceptable basis and that award would be made to the lowest priced technically acceptable offeror.

Four firms submitted initial proposals before the June 13, 1988, closing date. After evaluating the technical proposals, the agency informed Techniarts by letter of November 23, that the following areas of its proposal required clarification:

^{1/} The system is to be used to send and receive full-motion color images to and from remotely located missile telemetry stations. The system consists of an enclosure, the necessary electronics and a subsystem which codes video and audio signals for transmission and decodes the signals for display.

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1. Proposal indicates use of modular self-contained enclosure instead of demountable partitions.
2. Light controls and emergency lights not addressed.
3. Equipment/Display bays not adequately addressed.
4. Proposal does not address presentation camera lens motor drive.
5. VCR not adequately addressed.
6. Slide projectors not adequately addressed.
7. Microphones and speakers not adequately addressed.
8. Controller not adequately addressed.

The letter also stated that best and final offers (BAFOs) were due on December 12.

The Navy evaluated the BAFOs and concluded that Techniarts' proposal was unacceptable. Accordingly, by letter of January 23, 1989, the Navy informed Techniarts of this, listing three main reasons for rejecting the proposal.

First, the agency indicated that although the proposal showed that demountable partitions would be used it did not provide sufficient technical detail as to how the enclosure would be integrated into the existing building. In addition, the proposal did not affirm that Techniarts could meet the NC-30 specification.^{2/}

Second, the agency stated that the protester's proposal did not provide sufficient technical detail as to how equipment/display bays would be integrated into the finished enclosure. Further, according to the evaluators, the proposal did not show what sound/acoustic treatment would be applied to the equipment/display bays to maintain the NC-30 required noise level inside the enclosure.

Finally, the agency stated that the proposal provided insufficient technical details on the design of the remote control and that there is "a technical incompatibility between the system controller DCU RS-232 output port and the RS-422 input port of the presentation camera pan-tilt head."

^{2/} NC-30 refers to the level of ambient noise allowed inside the enclosure.

The other three BAFOs were judged technically acceptable. The BAFO prices were \$2,955,375 for Techniarts, \$3,964,961 for SAIC and \$4,499,450 and \$5,565,509 for the other two offerors. Since SAIC submitted the lowest priced technically acceptable proposal, the contract was awarded to it on January 19.

Techniarts contends that discussions were inadequate because its proposal was found technically unacceptable for reasons other than those set out in the Navy's November 23 negotiation letter. According to the protester, the eight issues raised in the November negotiation letter dealt with relatively insubstantial issues which related to, for the most part, off-the-shelf, commercial units to be integrated into the system. Finally, Techniarts argues that, in the past, it has submitted essentially the same proposal that was judged technically acceptable for similar systems.

Contracting officers are required to conduct discussions with all competitive range offerors. Federal Acquisition Regulation (FAR) § 15.610. The discussions must be meaningful, and in general this means that agencies must advise offerors of deficiencies in their proposals to afford them an opportunity to revise their proposals to fully satisfy the government's requirements. FAR § 15.610(c)(2); Princeton Gamma-Tech, Inc., B-228052.2, Feb. 17, 1988, 88-1 CPD ¶ 175. In this regard, discussions should be as specific as practical considerations will permit in advising offerors of deficiencies in their proposals. Presentations South, Inc., B-229842, Apr. 18, 1988, 88-1 CPD ¶ 374. Where discussions are unnecessarily general, we will sustain a protest and normally recommend reopening negotiations. See Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300.

The Navy's discussions with Techniarts consisted entirely of the eight issues raised in the November 23 letter. The agency concedes that Techniarts' BAFO adequately addressed five of the issues listed in that letter. It argues, however, that Techniarts did not respond satisfactorily to the matters raised concerning the enclosure partitions, the equipment/display bays and the controller and that these deficiencies lead to the proposal's rejection.

Based on our review of the record, we conclude that the reasons given in the January 23 letter for rejecting Techniarts proposal were either not previously raised by the Navy during discussions or were raised by the agency in a manner that did not give Techniarts notice of the specific areas of its proposal that required improvement or elaboration.

First, the January 23 letter stated that Techniarts' BAFO did not provide sufficient technical detail as to how the firm would integrate the VTS enclosure into the existing building. The Navy concedes that it first raised this issue with Techniarts in the January 23 rejection letter but argues that the issue could not have been raised earlier, apparently because the agency concluded that the initial proposal had offered a self-contained room rather than the required removable partitions.

The Navy in its final protest submission seems to state that it misread Techniarts' initial proposal as offering a self-contained room when in fact it did not. It appears to us that if the agency had more carefully evaluated the protester's original proposal, it would have concluded that it was deficient not because the protester offered a self-contained room but because, as the agency stated in the rejection letter, the proposal lacked details on how the enclosure would be integrated into the existing building. Since the agency did not inform the protester of the actual deficiency in its proposal during discussions, those discussions, as far as the particular deficiency was concerned, were inadequate.

We also conclude that the Navy failed to inform Techniarts during discussions that the firm's initial proposal did not offer to achieve an NC-30 noise control environment. While, as indicated above, the November negotiation letter expressed the evaluators' apparently erroneous concern about the nature of Techniarts' partitions, the Navy concedes that Techniarts was not told during discussions that Navy evaluators interpreted the firm's initial proposal as taking exception to the NC-30 noise control requirement.

The January 23 rejection letter also says that Techniarts' BAFO did not provide sufficient technical detail on how the equipment/display bays would be integrated into the finished enclosure nor how the bays would impact the NC-30 environment required for the enclosure. In response to Techniarts' contention that these issues were not raised in discussions, the Navy refers to the statement in the November 23 discussion letter that the equipment/display bays were "not adequately addressed."

With respect to what "integration details" were lacking, the Navy generally explains that integration of the bays requires more than just bolting racks together and that all items in the VTS must interact to provide the proper conference environment. Also, the Navy says that careful attention must be paid to lighting, acoustics, color, contrast, camera angles and human factors.

In response, Techniarts says that it responded to the November 23 letter by explaining in its BAFO the dimensions of the bays, their placement (between equipment racks, recessed approximately 23 inches) color and shape of the recessed portion of the bays, treatment to minimize visual reflections and attenuation of the access panels. Techniarts also says that the bays are nothing more than cabinets used to hold various items of equipment such as television sets and that, beyond the need for good workmanship in construction, they have negligible technical importance.

In our view, the statement in the November negotiation letter that the equipment/display bays were not adequately addressed did not give Techniarts reasonable notice of the evaluators ultimate concern about integration of the bays into the enclosure. Techniarts responded in general terms to the general issue raised in negotiations but had no way of knowing the Navy's specific concern about integration. The agency does not explain why it was interested in information concerning the integration of the bays into the enclosure as opposed to that concerning the structure of the bays themselves.

Similarly, we conclude that the Navy gave Techniarts no notice in negotiations that the technical evaluators were concerned about the acoustic treatment of the firm's display bays necessary to maintain the NC-30 noise control environment. The negotiation letter generally stated that the display bays were not adequately addressed but made no mention of the NC-30 standard in any context. If that was a significant weakness in the firm's proposal, it should have been identified as such in negotiations.

The proposal rejection letter also indicated that Techniarts' proposal provided insufficient technical details on the design of the remote control unit it proposed to fabricate and that there was a "technical incompatibility" between the output port of the system controller and the input port of the presentation camera pan-tilt head. Although the November 23 negotiation letter stated that the "controller" was not adequately addressed, that letter did not indicate that there was any problem with information Techniarts provided regarding its remote control unit. The RFP specifications at section 3.3.13 call for a "system controller." The specifications stated that:

"One system controller shall be provided. The controller shall consist of a primary controller (controller) and a table top mounted remote control unit (remote)."

The purpose of the primary controller is to monitor and issue commands to all interfaced devices, and accept commands from the remote control unit while the remote control unit includes the controls and indicators dictated by the RFP for controlling the cameras, audio, slide projectors and other devices in the VTS.

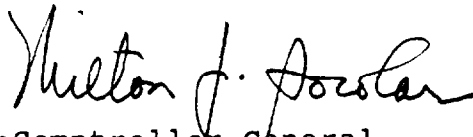
Since the RFP specification used different terms, "controller" for the primary controller and "remote" for the remote control, we do not understand why the agency would indicate that the "controller" was not adequately addressed when it concluded that Techniarts' proposal was deficient because it did not contain sufficient information regarding the remote control unit.

Further, the Navy also did not advise Techniarts during negotiations that there was a "technical incompatibility" between the output port of the system controller and the input port on the presentation camera pan tilt head, although that also was one of the reasons ultimately listed for rejecting the firm's proposal. We do not think that this incompatibility was clearly raised as a deficiency by generally telling the offeror that the controller was not adequately "addressed." That implies an informational deficiency not that there is a technical problem with the unit.

We conclude that the Navy did not reasonably advise Techniarts during discussions of the specific areas of its proposal that made it unacceptable. In a case such as this, where the agency is to make award based on the lowest priced, technically acceptable approach and, with one exception where the deficiencies seem to be largely informational, we simply see no reason why the agency should not have clearly and precisely told the protester exactly where the informational gaps were in its proposal. We therefore sustain the protest and recommend that the Navy reopen discussions with Techniarts identifying the areas which the firm should address and giving the firm an opportunity to submit a revised technical proposal. If, after evaluating the revised technical proposal, the Navy determines that Techniarts is in line for award, the contract with SAIC should be terminated for convenience and award made to that firm. We also find that the protester is entitled to

recover the costs of filing and pursuing the protest. Bid
Protest Regulations, 4 C.F.R. § 21.6(d) (1988).

The protest is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States